

## **CHAPTER 11. TELEPHONIC APPEARANCE (Civil and Criminal) and FACSIMILE FILING**

### **11.1 Telephonic Appearance**

#### **a. Program Overview**

1. The Mendocino County Superior Court provides a procedure for telephonic appearance by attorneys in appropriate cases and situations as an alternative to personal appearance. CourtCall, LLC is the provider of services and support relative to the telephonic appearance procedure. All telephonic appearances are fully voluntary and no attorney is required to make a telephonic appearance or use the services of CourtCall.
2. Hearings are conducted in open court or in private, as the court may from time to time direct. Attorneys making telephonic appearances shall call a designated toll free teleconference number a few minutes before the calendar is scheduled to be called to check in with the clerk. After checking in attorneys shall remain on the courts speakerphone. Attorneys not participating telephonically appear in person.
3. Telephonic appearances are scheduled, in writing, in advance, by counsel serving on all other counsel and pro-se parties and delivering (via fax, mail, or personal delivery) to CourtCall, LLC, not less than five court days prior to the hearing date, a request for telephonic appearance form and by paying a fee of \$55.00 for each CourtCall appearance.

#### **b. Participation in Telephonic Appearances**

##### **1. Matters Not Suitable for Telephonic Appearance**

- a. Subject to the court's right to amend this list, the following matters are currently deemed unsuitable for telephonic appearances.

##### **Civil**

1. Mandatory settlement conferences;

2. Ex parte applications;
3. Hearings at which oral testimony may be presented;
4. Hearings in which oral argument is anticipated to exceed 15 minutes;
5. Judgment debtor examinations.

**Criminal**

1. Preliminary hearings;
  2. Trials;
  3. Any other evidentiary hearings.
- b. The court reserves the right, at any time, to reject any request for telephonic appearance. When the court rejects a request, it shall order a refund of deposited telephonic appearance fees and notify CourtCall, LLC.
  - c. The court shall also reserve the right to halt the telephonic hearing on any matter and order the attorneys to personally appear at a later date and time, in which case no refund is permitted.
  - d. If a matter is continued prior to the actual hearing date, the prior filing of a request for telephonic appearance form shall remain valid for the continued date of the hearing provided the attorney notifies CourtCall, in writing, of the continuance. There are no refunds for matters which go "off calendar".
  - e. Existing rules and procedures regarding the making of the record by a court reporter or electronic device or obtaining a transcript after the hearing shall apply to hearings at which telephonic appearances are made.

**2. Attorneys**

- a. Attorneys electing to make a telephonic appearance shall serve on all other parties in the case the request for telephonic appearance form, fax a copy of the form to CourtCall, LLC and pay the telephonic appearance fee in

the method prescribed, not less than five court days before the hearing date.

- b. When the request for telephonic appearance is made at the same time as the filing of the hearing document or response, in addition to the request for telephonic appearance form, the words "Telephonic Appearance Requested" shall be printed below the department, date, and time of the hearing on the first page of the papers filed with the court.

### **3. Appearance Procedure**

- a. An attorney making a telephonic appearance shall:
  - 1. Eliminate to the greatest extent possible all ambient noise from the attorney's location;
  - 2. Be required, during the attorney's appearance, to speak directly into a telephone hand set;
  - 3. Not call in via pay phones, cellular or cordless telephone devices or via a personal computer.
- b. An attorney making a telephonic appearance shall call the court's designated toll free teleconference line approximately 5 minutes prior to the scheduled hearing time and check-in with the clerk. An attorney calling after the check-in period shall be considered to be late for the hearing and shall be treated by the court in the same manner as if the attorney had personally appeared late for the hearing.
- c. An attorney appearing telephonically shall state his or her name for the record each time the attorney speaks and shall participate in the appearance with the same degree of courtesy and courtroom etiquette as is required for a personal appearance. An attorney shall not utilize the "hold" button, as it is not within the policy of the court to wait for an attorney to rejoin the line.
- d. **Criminal Proceedings:** All of the above rules apply in criminal proceedings except to the extent modified by this section (d). Telephonic appearances are specifically deemed appropriate for bail reduction hearings, motions and sentencing hearings.

- 1. Request for Telephonic Hearing Form.** In order to participate in a telephonic hearing, defense counsel shall have first faxed to CourtCall, no less than five court days prior to the scheduled arraignment or hearing date, a request for telephonic appearance form provided by CourtCall, unless counsel has been retained less than five days prior to the arraignment date, or in the event of scheduling conflicts or emergencies. In such a case, counsel may submit the form and payment to CourtCall within the five day period prior to the hearing date, but in no case later than 12:00 p.m., on the court day prior to the hearing. The submission of the form shall be accompanied by a payment of the appropriate fee, by check or credit card.
- 2. In Custody Cases.** In all misdemeanor and felony cases in which the defendant is in custody, and counsel wishes to make a telephonic appearance he or she must first obtain the approval of the defendant. By filing the request for telephonic appearance, counsel shall be deemed by the court to have obtained approval of the client. Counsel's appearance will then proceed as in cases where the defendant is not in custody.

In all custody cases in which the defendant will be present in a holding area or in the courtroom when the case is called, the defendant will be permitted to hear his attorney's telephonic request for a continuance, and at the time will be asked whether or not he/she joins in the request. If the client does not agree to the requested continuance, then counsel will be ordered to appear in court as soon as possible.

- 3. Discovery.** It is understood that counsel will normally obtain a copy of the complaint, police report, and other discovery materials from the district attorney at the time of an arraignment. In all cases in which counsel has appeared at the arraignment by way of a telephonic appearance, it will be the responsibility of counsel to obtain

discovery from the district attorney as soon as possible. In any event, counsel shall make arrangements to obtain all discovery from the district attorney prior to the next scheduled court appearance. A further continuance of the arraignment will not be permitted on the sole ground that counsel did not obtain discovery by the time of the arraignment, if said discovery was available.

- 4. Failure to Appear.** In any case in which a defendant, through his/her counsel, has requested a telephonic appearance and the attorney fails to appear (either telephonically or in person) the matter will be treated as a nonappearance.
- 5. Felony Cases.** Telephonic appearances shall be available in all felony cases where the defendant expressly agrees in advance that counsel can appear telephonically. Telephonic appearances in felony cases shall occur only in those cases where the defendant has previously assured counsel that he or she can and will be present in court at least ten minutes prior to the time of the hearing. In those cases where the defendant is present, the court will first inquire as to whether the defendant agrees to the telephonic appearance of counsel. If the defendant so consents, the arraignment or motion to continue shall be heard. If the defendant does not consent, then defense counsel shall be ordered to appear immediately in court, or to make arrangements for other counsel to appear on his or her behalf. In those cases where defense counsel has submitted a request for a telephonic appearance and the defendant has not appeared in court at the time of the scheduled hearing the matter will be treated as a nonappearance.
- 6. Announcement of Readiness for Trial; Telephonic Hearing Request.** Once counsel for all parties have announced ready for trial, as a result of the lack of an available trial court on that date, a case may trail to a new date. In such instances it is common for the case to trail to a new date within the approved trailing period. The court acknowledges that in such circumstances

the only purpose served by defense counsel appearing in court is to announce ready for trial and to be ordered to return to court on a specific date within the trailing period. Therefore, where it is anticipated by counsel that after announcing ready for trial his case will be trailed to a new date in the same court, counsel may request a telephonic appearance where counsel intends to announce ready for trial and expects to trail to a new date selected by the court.

**7. Cases Involving More Than One Defendant.**

Telephonic appearances are permitted in cases involving more than one defendant. In such cases counsel shall, whenever possible, first notify all co-counsel of his intention to make a telephonic appearance and secure their agreement. All counsel should agree on the next court date, and so inform the court at the time of the hearing. Counsel making the telephonic appearance should also request that co-counsel either appear in court at the time of the hearing, or make arrangements to stand in for co-counsel at that time. In all cases in which counsel has not secured the prior agreement of co-counsel, and such counsel are not present at the time of the court retains the discretion to order counsel to appear in person at an appropriate time when all counsel can appear.

In cases in which counsel is unaware of the existence of co-defendants (such as an initial arraignment), counsel will assume the risk that the court may inform counsel of the existence of other defendants, and either require counsel to appear personally, or have another attorney or co-counsel appear on his or her behalf at second call.

Eff. Jan. 1, 1999. As amended, eff. Jan. 1, 2003

## **11.2 Facsimile Filing**

This rule is adopted in accordance with the provisions of rule 2001 et seq. of the California Rules of Court, and applies to civil, probate, and family law proceedings, with the exception that wills, codicils, bonds or undertakings shall not be filed by facsimile transmission. A document that is to be issued by the

court (including, but not limit to, a summons, letters of administration, letters testamentary, and a writ of execution) shall not be sent to the court by facsimile transmission.

**a. Definitions.** As used in this rule, unless the context requires otherwise:

1. "Facsimile transmission" means the transmission of a copy of a document by a system that encodes a document into electrical signals, transmits such electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.
2. "File" or "filing" means the facsimile transmission of a document to a fax filing agency for filing with the court.
3. "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.
4. "Fax filing agency" means an entity that receives documents by fax for processing and filing with the trial courts. An attorney or law office may act as a fax filing agency, for the attorney, the law office or others.

**b. Compliance with CRC 201 and 501 and the Local Rules of Court**

1. A fax document shall comply with rule 201 and rule 501 of the California Rules of Court and all applicable rules of this court.
2. An exhibit that exceeds 8 1/2 by 11 inches shall be reduced to 8 1/2 by 11 inches before it is transmitted. The court may require the party to file the original of an exhibit that has been filed by fax.
3. Any document which contains an exhibit which cannot be accurately transmitted by fax shall not be filed by fax.

**c. No Direct Transmission for Filing.** Facsimile produced documents may not be transmitted for filing directly to any fax machine owned or operated by the court or the clerk's office. In order to be filed with the court, all facsimile produced documents must be present for filing at the filing window or by mail. All requested fees must be paid at the time of filing.

- d. Quality of Facsimile Produced Documents.** In order to be filed with the court, all facsimile produced documents must be produced on plain 8# bond paper by laser printer or better quality technique, and in terms of legibility, quality of paper and permanence must be of equal or better quality than non facsimile produced documents.
- e. Fax Filing Agency.** A party may transmit a document by fax to a fax filing agency for filing with the trial courts. The fax filing agency acts as the agent of the filing party and not as an agent of the court.
- f. Duties of the Fax Filing Agency.** A fax filing agency that receives documents for filing shall:
  - 1. Prepare the documents so that the documents comply with rule 201 and rule 501 of the California Rules of Court and any other requirements for filing with this court.
  - 2. Take the documents to the court.
  - 3. Place the words "Filed by fax by," followed by the name of the agency, at the bottom of the last page of the document.
  - 4. File the document with the court.
  - 5. Pay any applicable filing fee.
- g. Requirements for Advance Arrangements.** A fax filing agency shall not be required to accept papers for filing unless appropriate arrangements for payment of filing fees and service charges have been made by the transmitting agency before the papers are transmitted to the fax filing agency.
- h. Confidentiality.** A fax filing agency shall keep all documents transmitted to it confidential except as provided in these rules.
- i. Certification by Person Receiving Transmission.** In order to be filed with the court, a facsimile produced document must have a certification on the last page signed by the person who received the facsimile transmission which certifies under penalty of perjury that the document to be filed is the full, complete and unaltered facsimile produced document received.

***California Rules of Court, Rule 2005(e)*** "A fax filing agency, by filing a document with the court, certifies that it has complied with these rules and that the document filed is the full and unadulterated facsimile produced



*document received by it. No additional certification shall be required of the agency.”*

**j. Multiple Facsimile Transmissions.** In the event that a facsimile produced document is transmitted for the purpose of signatures by multiple parties or for any other purpose which does not result in the modification of the facsimile produced document originally transmitted, a certification, as required in section (i) of this rule, must be provided by each person receiving the facsimile transmission.

**k. Signatures.**

1. A party who files a signed document by fax pursuant to Code of Civil Procedure 1012.5 and these rules represents that the original physically signed document is in his or her possession or control.
2. Notwithstanding any provision of law to the contrary, including Evidence Code sections 255 and 260, a signature produced by facsimile transmission will be treated as an original.
3. Within fifteen (15) days after service of a signed facsimile filing, any other party may serve a demand for production of the original physically signed document. The demand shall not be filed with the court. Failure to serve a demand is a waiver of the right to demand production of the physically signed original.
4. If a demand for production of the original physically signed document is made, the filing party shall arrange a meeting at which the original physically signed document can be examined.

**l. Notation of Facsimile Filing.** Each facsimile filing shall include the words “by fax” or “by facsimile” on the first page, beginning at the left margin of the line immediately below the name and address of the attorney or party. If a party is represented by an attorney, the attorney shall also include his or her facsimile machine telephone number, designated as a “fax” number, as part of the attorney’s name, address, State Bar membership number, and telephone number on the document.

Eff. Jan. 1, 1999.

(Page deliberately left blank)